AMERICAN FEDERATION OF TELEVISION & RADIO ARTISTS (AFL-CIO)

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Office of the Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

RE: Comments In the Matter of 1998 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996/MM Docket No. 98-35/98-37

Dear Chairman and Fellow Commissioners:

Enclosed please find one original and nine (9) copies of comments submitted by the American Federation of Television and Radio Artists, AFL-CIO in the above referenced Docket.

In advance, thank you for your consideration.

Sincerely,

Kim A. Roberts
Associate National Executive Director

Enclosure

Cc: Jack Golodner, President
Department for Professional Employees

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Before the
Federal Communications Commission
Washington D.C. 20554

In The Matter of	)	MM Docket No. 98-35
	)	[FCC 98-37]
	)	
1998 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996.	)	

COMMENTS OF

AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS

I. INTRODUCTION

1. These comments are submitted on behalf of the American Federation of Television and Radio Artists, AFL-CIO (AFTRA), a national labor organization with a membership of over 77,000 professional employees working in the news and entertainment industries, in response to the Commission's Notice of Inquiry adopted March 12, 1998 and released March 13, 1998, soliciting comments in connection with the Commission's review of its current broadcast ownership rules.

2. AFTRA's membership includes news reporters, news anchors, news writers, news producers, photojournalists, talk show hosts, announcers, disc jockeys and performers employed by ABC, CBS, NBC, Fox and their owned and operated stations, as well as by local radio and television stations owned by independents and group owners. AFTRA maintains over 300 collective bargaining agreements with the major networks and independently and group owned radio and television stations. As the representative of broadcast employees at radio and television stations in markets of varying size throughout the country, AFTRA has a uniquely "inside" view into the effects of the elimination and relaxation of broadcast station ownership limits, and in particular, how the changes in

the broadcast ownership rules promulgated in accordance with Section 202(h) of the Telecommunications Act of 1996 have adversely affected the public interest as has been defined by the Commission.

3. AFTRA has previously filed comments with the Commission in the matter of MM Docket Nos. 91-221 and 94-322. AFTRA's comments in MM Docket No. 98-35/98-37 specifically address the national television ownership rule, the local radio ownership rule and the effects of recent consolidation in the radio industry since the passage of the Telecommunications Act of 1996 (the "Telecom Act"). Based upon its experience, AFTRA believes that prior legislation and rulemaking that relaxed or eliminated previous ownership limitations have had an adverse affect on diversity of opinion, and consequently have not served the public interest. AFTRA believes that the current radio and television station ownership limits, while inadequate, must be maintained to preserve diversity of opinion and competition in the industry for the benefit of the public interest.

II. <u>Comments on the Commission's Framework of Review</u>

4. The Commission requested public comment on the correctness of its framework of review, and in particular, on the value of continuing its emphasis on competition and viewpoint diversity as the Commission's goals in regulating broadcast service.[1]

5. Based upon its extensive experience in the industry, AFTRA agrees with the Commission's longstanding recognition of the critical importance of competition and viewpoint diversity in evaluating whether broadcast ownership rules promote the public interest. AFTRA's experience indicates that the only way viewpoint diversity can be maintained in the broadcast industry is through competition among separately owned outlets, with the attendant expression of varied viewpoints and programming. Also, AFTRA agrees with the Commission's efforts to promote competition in the industry, through the evaluation of the economic markets of delivered video programming, advertising and program production. However, AFTRA submits that in evaluating the level of competition in program production, the Commission should also take more careful note of the anti-competitive effect of ownership consolidation on employment patterns of broadcast talent, as

[1] Notice of Inquiry, MM Docket No. 98-35/98-37 ("NOI") ¶ 5, 7.

this vital aspect of competition has been seriously affected by the domination of single owners in a market. As the Commission has noted, in response to lifting ownership restrictions in 19996, many local markets have become dominated by single owner in the last two years. This has also resulted in a corresponding drop in market competition for broadcast talent (including newspersons) in these markets. AFTRA members report that in local markets dominated by large companies, the dominant companies have used their monopolistic market power to depress talent salaries even where the individual stations they own are experience robust financial success. Economies of scale made possible through horizontal integration in the marketplace have resulted not only in a sharp reduction in the number of broadcast personnel involved in the delivery of news and public affairs programming (as will be discussed in more detail below), but also artificially low ceilings in the salaries of broadcast talent.

III. National Television Ownership Rule.

8. The Telecom Act eliminated the numerical limits on the number of television stations one entity could own, and increased the maximum allowable audience reach from one-quarter of the national television households to over one-third of the available households. In response to the Commission's inquiry,[2] maintaining this remaining limit on national television ownership will not harm competition in any way and is essential to protect the public interest in diversity on the airwaves.

9. There is no need to eliminate the single remaining limit on national television ownership at this time. As of 1997, only one television group, Fox Television Stations, Inc., was close to reaching the national audience reach limit of 35% (34.8%)[3]. Further, of the top 25 TV station ownership groups, the number of TV stations owned by each of those groups ranged from a low of 6 stations (Post-Newsweek) to a high of 46 stations (Paxon Communications Group). Given the growth of these companies' television holdings during the two years since the Act was passed, there is no credible argument to be made by these companies that the remaining limit of 35% of the national television households impedes their ability to purchase new outlets, grow their businesses, or effectively compete in the industry.

[2] NOI, ¶¶18-19.
[3] NOI, Appendix A

10. Indeed, any argument that could be made about the possible stifling effect of previous limitations was rendered moot when the national numerical limit of 12 television stations was eliminated by the Telecom Act. As some supporters of the Telecom Act noted, the previous limit of 12 television stations may not have adequately made allowances for the differences in market size, audience reach, potential share of the advertising market, etc. Although AFTRA did not agree that the numerical limit should have been completely eliminated, AFTRA recognizes that the previous limit did not take into account these various factors which may have been relevant to an analysis of competition in the industry.

11. However, given the present pace of TV ownership consolidation, it should be presumed that elimination of this remaining limit would encourage further ownership consolidation nationwide, thereby reducing diversity in the TV broadcast marketplace contrary to the public interest. Eliminating the one remaining limit on national television ownership will result in further reduction of station owners nationwide as large companies will be free to consolidate their ownership of television stations to a greater extent than they already have during the past two years. Logic dictates that as one company can own a larger number of stations, fewer different entities have the opportunity to participate in the broadcast marketplace. An increase in ownership limits that would permit more ownership concentration nationwide will reduce the number of owners and thereby reduce the diversity of opinion available in the broadcast marketplace, and should be presumed contrary to the public interest.

12. Large companies owning many broadcast properties have simply not provided the public with the same level of diversity in news and public affairs programming previously provided by companies with fewer broadcast properties. AFTRA has observed that where companies increase their holdings, the diversity of news and public affairs programming they provide to the public decreases. Broadcast companies that have purchased large numbers of stations nationwide make no secret of the fact that they are seeking to improve their financial standing by getting 'more bang for the buck'. Among other things, they do this by re-cycling news and public affairs programming through their owned stations to amortize the cost of that programming over their different outlets. However, this in turn means that the various outlets are producing less original and distinct news and public affairs programming, which reduces the diversity of the news and public affairs information

available to the public.

13. For example, AFTRA maintains approximately 40 separately collective bargaining agreements with CBS/Group W. During the past three years[4], one of CBS/Group W's primary goals in its collective bargaining negotiations with AFTRA has been to expand its rights to re-use and re-cycle news programming among its different owned and operated outlets. One purpose of these proposals is to enable to company to re-use and re-cycle news stories gathered by one reporter or news writer over more of its other owned stations, rather than having different reporters and news writers in separate markets provide different angles and perspectives on the news broadcast to the public.

14. From a business point of view, one can understand why a company such as CBS/Group W would prefer to have one reporter provide a story to 10 different stations rather than paying 10 reporters to cover the story for 10 different outlets. It would reduce costs and improve the bottom line for the benefit of stockholders. However, in terms of the public interest, the public receives one perspective on story instead of receiving a number of different angles and perspectives on the story. AFTRA believes such a scenario does not foster the kind of diversity in news and public affairs programming that is integral to maintaining an informed American public. In sum, the public interest is not served, and is in fact harmed.

15. AFTRA has seen this same phenomenon of the sharing and recycling of news and public affairs programming over group owned station in radio. Although, as discussed below, the impact is more obvious on the local level, the problem nonetheless exists on a national scale. Nor is the issue limited to news programming. Group owners who have increased their radio holdings nationally are using those holdings to provide outlets for their networks and syndicated programs. For example, Chancellor Broadcasting, which has increased its holdings from 32 radio stations in 1996 to 108 stations as of May 18, 1998[5], has announced its intention to re-use and re-cycle local radio station programming on its other owned stations around the country. This will be done either

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[4] The CBS/Group W merger was announced in August 1995, and obviously had been under discussion between the two companies sometime prior to that date.

[5] "Who Owns What", May 18, 1998. This figure misleading, however, because Chancellor is owned by Hicks, Muse, Tate, which also owns Capstar Broadcasting, the licensee of over 300 radio stations.

through separate regional or national broadcast of programs or through its newly developed radio network, AM/FM Networks. By so doing, Chancellor will replace locally generated radio programming with fare from its other owned and operated stations. Further, ABC Radio, which is owned by Disney, is purchasing radio stations to provide new outlets for its syndicated "Radio Disney" programming, rather than fostering and promoting locally produced and original programming for the various local markets in which it operates. Should the Commission eliminate or raise the national television ownership limits any further, a similar result is likely to follow in the television marketplace.

IV. Local Radio Ownership Rules.

16. The Commission also sought comment on the effect of the reduction in the radio ownership rules on competition diversity and whether the present ownership restrictions are still necessary to protect the public interest. Based on its observations of the industry in the last two years, AFTRA submits that the consolidation of ownership in the radio broadcast made possible by the relaxation of ownership rules has resulted in a sharp diminution of program and viewpoint diversity on the airwaves as well as a curtailment of competition in the market for broadcast talent, which in turn has severely depressed talent salaries and discouraged innovative reporting.[6]

17. As shown by the Commission's Staff Report, the relaxation of the radio ownership rules resulted in a decrease in the number of different radio station owners from March 1996 through November 1997.[7] As the Staff Report notes, the top 10 radio Metro markets experienced an average loss of three (3) owners per market, from about 30 owners to about 27 owners per market. The practical effect however, is far more insidious.

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6 NOI, ¶¶ 21-23.

7 Mass Media Bureau Policy and Rules Division, Review of the Radio Industry 1997, ("Staff Report"), Appendix E.

18. AFTRA has observed that increases in local ownership limits in radio since 1992[8] have worked to the detriment of the public interest because the amount of locally-generated original news and public affairs programming provided to local communities has declined as a result of ownership consolidation in local markets.

19. The Staff Report indicates that notwithstanding the overall decrease in the number of distinct owners per market since 1996, there has been little or no decrease in the number of distinct radio formats per market overall.[9] However, the report fails to analyze the impact on the most important type programming in the context of serving the public interest, *i.e.,* news information and public affairs. The appropriate analysis should be to determine whether, particularly since 1996, there has been an increase or decrease in the amount of distinct and original sources of local news and public affairs programming which support the various radio formats (including news/sports) in local markets. AFTRA submits that before the Commission can decide whether remaining limits on local radio ownership are necessary to serve the public interest, it should conduct a more thorough review of whether the diversity of news and public affairs provided to local communities has declined since the passage of the Telecom Act.

20. AFTRA has observed that companies taking advantage of the increased local radio duopoly limits have done so for several reasons, one of the most important being the achievement of economies of scale. Indeed, many comments which supported previous FCC actions to increase local radio ownership limits cited economies of scale as a legitimate rationale for permitting one company to own more properties in a single market. Although AFTRA acknowledges the desire of profit-driven broadcast companies to combine rent, studio space, support services, sales and administrative forces to save overhead expenses, AFTRA submits that economies of scale in the production and dissemination of news and public affairs to the local community is antithetical to the public interest and does a disservice to the community which the licensee is required to serve.

21. Ownership diversity has a direct effect on viewpoint diversity in the areas of news and

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8 Radio ownership limits were increased from 24 to 36 stations nationwide and 2 to 4 stations per market in 1992, and to 40 stations nationwide beginning in 1994. The 1996 Act removed the national numerical limit and increased the local limits to up to 8 stations per market.

9 Staff Report, page 7

public affairs. Independently owned stations compete for news stories and use different journalists and news crews to cover news events and public affairs commentary and analysis. In markets where a single owner owns several stations, by contrast, these different stations generally share news programs and public affairs programming. AFTRA has observed that where a company has purchased additional stations in a local market under increased ownership limits, the company tends to combine the stations' separate news operations and downsize them to provide economies of scale, instead of retaining independent news operations to cover local news stories for broadcast to the community.

21. AFTRA's experience over the past two years demonstrates that companies have used their domination in markets to reduce rather than enhance the delivery of news and public affairs programming. The following are but some examples of this trend:

22. In Chicago, CBS, Inc. is using one news program (WMAQ-AM) on its two other recently acquired stations, WXRT-FM and WSCR-FM, which previously broadcast separate news programs.

23. In Philadelphia, CBS, Inc. is using its newly acquired news station, KWY-AM, to provide news on WPHT, which had independent news programming under its prior format.

24. In Kansas City, Entercom is using the newspersons at one of its stations, KMBZ-AM, to provide news on all three of its AM stations (KMBZ-AM, KCMO-AM, WDAF-AM), with these same news reports then being read, in turn, by news readers at its FM stations, (KCMO-FM, KYYS-FM, KUDL-FM). The community lost the separate news programs that were previously produced for WDAF-AM and KUDL-FM.

25. In Pittsburgh, ARS is planning to cross-utilize news and production over three of its recently acquired stations, WBZZ-FM, WZPT-FM and WDSY-FM.[10]

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[10] ARS has recently been purchased by CBS, which also owns KDKA-AM and KDKA-TV in the same market.

26. In San Francisco, Susquehanna is now using the same news programming on all of its stations, KFOG, KNBR-FM, KTCT and KSAN, as is Bonneville at its stations, KOIT-AM/FM, KDFC-FM and KZQZ-FM.

27. In Seattle, Fisher Broadcasting has consolidated the operations and news programming of its station, KOMO-AM with its recently acquired stations, KVI-AM and KPLZ-FM, moving all three into one facility. Further, Entercom has announced its intention to AFTRA to use the news programming from KIRO-AM for broadcast over its seven other stations in the market.

28. In addition, where consolidation and downsizing of news departments occur, the remaining newsperson has to pick up the remaining work and is required to spend more time feeding each of the different commonly owned local radio outlets. He/she therefore has less time to investigate stories, verify news sources, and perform other functions necessary for the practice of sound journalism and accurate reporting.

29. Another cost-saving mechanism used by companies that have purchased large holdings is the 'outsourcing' of their local news and information programming. The use of such outside sources reduces costs by eliminating newspersons' salary and benefits costs from the stations' expense lines. A common scenario is for an owner to contract with a traffic service to provide the local news for its various stations in a local market.[11] Reporters for these services sometimes use different names on each of the different stations over which they report, giving the public the impression that there are different reporters and anchors providing news to the various stations when in fact it is the same person. Furthermore, the reporters on these services often identify themselves as

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[11] The two most prominent traffic services are Shadow Traffic and Metro Networks. They began as services that provided local rush hour traffic information to local radio and television stations. In response to the desire of local radio station owners to reduce their personnel costs, these services began to provide sports, weather and hard news to local radio stations. Several Shadow Traffic outlets in major markets (Los Angeles, New York, San Diego, Washington D.C. and others) are owned by Westwood One, which has common ownership with CBS.

AFTRA does not challenge the value of such services to supplement local news and information generated by local radio stations, or to provide information to financially struggling radio stations that are unable to provide any news and information. AFTRA supports and encourages the services such entities can provide in these situations. AFTRA submits, however, that the trend of replacing original, distinct and diverse local news and information on radio stations with 'outsourced' news and information is harmful to the local community.

if they are employees of the station on which their reports are heard, but they are neither employees of the station nor reporting from the station's studios and using its newsgathering facilities (if any such newsgathering facilities exist). So, for example, a listener to four different stations owned by the same company might believe that there are four distinct newsrooms being staffed by four distinct sets of reporters and anchors. In fact, there may only by one 'newsroom' (that of the traffic service) with the same reporter or anchor re-feeding the same news stories and the same angles on those stories to the listening public. The following are a few examples of the trend of replacing original local news programming with outsource news after consolidation:

30. Clear Channel Communications, which owns over 180 stations, eliminated the news departments of WHYN-AM/FM in Springfield, MA and WELI in Bridgeport CT in 1997. In the former case, three full time newspersons were terminated when the WHYN newsroom, one of just four major local newsrooms in the area, was eliminated and replaced with outsourced news supplied by Metro Networks' Hartford operation. In the case of WHYN, this particularly raises questions about the quality of local news when one of a handful of the community's significant local news operations was closed and replaced with a news source located outside the city limits.

31. ARS (American Radio Systems) closed the newsroom of WRKO-AM in Boston and farmed out the local news to Metro. ARS did the same at WHDH-AM (now known as WEEI-AM), another of its owned stations in Boston.

32. In markets where multiple, and competing, radio stations are closing their news gathering operations and purchasing local news from one central operation, the quality of news provided to the local community is called into question. Furthermore, smaller markets which have less access to independent sources of local news may be particularly vulnerable if stations outsource to operations beyond city limits, as in the case of Springfield's WHYN. As outsourcing continues to replace in-house news departments within a market, news will be delivered by fewer independent local sources and may diminish the imperative to deliver quality diverse news programming to the community.

33. In addition to eliminating the diversity in news programming, companies also use their dominant power in local markets to curtail the delivery of public affairs and other community based

programming. For example, in San Francisco, Chancellor is using the same public affairs programming in all of its recently acquired stations: KNEW, KABL, KISQ, KYLD, L101, KKSF and KMEL. Bonneville has expressed an interest in re-cycling its San Francisco based public affairs programming nationally.

34. In these situations, local communities have lost the benefit of differing perspectives, analyses and approaches to news events and issues of public interest and have been consequently less well served by the diminution of diversity in news programming. Such consolidation and economies of scale are inherently adverse to the public interest because they tend to reduce the availability of new original news and public affairs programming or "homogenize" the programming that is available. Moreover, prior to 1996, many independent stations and smaller group-owned stations exchanged news material on the "open market" with differing independent and group owned stations and cable news operations, in addition to the networks with whom they may be affiliated. [12] Now, where such smaller operations have been acquired by larger broadcast operations, they are often required to carry the news and information provided by their owned company's other properties, rather than from a variety of different sources generated by different news organizations.

35. This loss of diversity in news and public affairs programming has particularly affected the opportunities for groups that have been historically excluded from the broadcast marketplace. Indeed, as the NOI notes, the loosening of ownership restrictions in the radio industry has resulted in a drop in the number of minority owned radio broadcast stations.[13]

35. Further, such economies of scale also result in dampening the incentive for newspersons to engage in provocative reporting. News reporters and anchors have reported when one or two companies dominate a market, major advertisers on those companies' stations will not look favorably on hard hitting stories which may place such advertisers in an unfavorable light. Moreover, newspersons are concerned with being "blackballed" in a market if they fall out of grace with the one or two companies that can dominate a market in the current ownership scheme. Previously, such a company represented only one of many contenders in a market for their services. Now, with one company owning up to eight stations in a market, that company can easily be the "only game in

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[12] Some cable networks also provide services to radio stations, such as CNN Radio.

town." Permitting a company to increase its market power in a city – as well as in other major cities - - would further exacerbate this problem. Simply, newspersons feel far less free to engage in hard hitting reporting because if they are terminated or otherwise fall out of favor with a company it can end a newsperson's career in a local market, or in several markets, where that company holds greater dominance than existed under prior ownership limits.

36. This trend of reduced news and public affairs programming to the public is common, particularly with companies that over-leverage themselves to acquire additional broadcast properties, as the financial pressure from such acquisitions necessarily demand cost-cutting and staff downsizing on the part of the acquired stations.

37. Finally, the consolidation of station ownership in a market not only reduces the level of viewpoint diversity so critical in the broadcast industry, but it also has an anti-competitive effect with respect to the market for broadcast talent. As the Commission has noted, horizontal integration in a market can give companies market power that artificially inflates the costs of advertising. But there are other anti-competitive effects as well. In markets where a few companies have achieved market dominance, AFTRA members have also experienced artificially low ceilings on talent salaries. Such artificial market conditions, combined with the constant threat of displacement as a result of the elimination of programming, and is damaging to the long-term vibrancy of the industry to the detriment of the public.

39. The Commission asked whether, given these results, the radio ownership rules should be modified in any respect. Based on its experience, AFTRA urges the Commission to recognize that the current ownership limits are not only still necessary to maintain diversity in the broadcast industry, but are essential to maintain this goal. Thus, it is essential that, at the very least, the current radio ownership restrictions remain in place.

V. CONCLUSION

39. AFTRA respectfully submits that not only is it critically important for the Commission

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[13] NOI, ¶22.

to continue to seek to achieve competition and viewpoint diversity in the broadcast industry, but that the current television and radio ownership limits, even in their limited form, are an essential part of this mandate in promoting the public interest.

Thank you for the opportunity to present our comments.

Respectfully Submitted,

Kim A. Roberts
Associate National Executive Director
American Federation of Television
& Radio Artists

Date

Dominique Bravo
National Representative/Staff Counsel
American Federation of Television
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